NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

RELFORD *v.* COMMANDANT, U. S. DISCIPLINARY BARRACKS, FT. LEAVENWORTH

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 98. Argued December 15–16, 1970—Decided February 24, 1971

Petitioner, then an Army corporal, was convicted in 1961 by a general court-martial for violating Articles 134 and 120 of the Uniform Code of Military Justice by kidnaping and raping, within the bounds of a military reservation, two women—one, who was waiting for her serviceman brother who was visiting the base hospital; the other, who was on her way from the home on the base where she lived with her serviceman husband to the post exchange where she worked. In this habeas corpus proceeding the Court granted certiorari on the issue of the retroactivity and scope of *O'Callahan* v. *Parker*, 395 U. S. 258 (1969), which held that a court-martial had no jurisdiction to try a member of the armed forces charged with attempted off-post rape of a civilian and related offenses since such crimes were not "service connected." *Held:*

1. Though some of the factors are present here that the Court relied on for its result in *O'Callahan* (the offenses were committed in peacetime within this country's territory, did not relate to the accused's military duties, were traditionally cognizable in civilian courts (which were available to try them), and did not directly flout military authority or violate military property), this case significantly differs from *O'Callahan* in that the crimes there were committed by a serviceman away from his base against a victim who had no connection with the base, whereas here the crimes were committed on the base against women properly there, one of whom was returning to her work on the base when the attack occurred. Pp. 9–10.

2. An offense committed by a serviceman on a military post that violates the security of a person or of property there is service connected and may be tried by a court-martial. Pp. 12–14.

3. The question of *O'Callahan*'s retroactivity is not decided. P. 15.

409 F. 2d 824, affirmed.

BLACKMUN, J., delivered the opinion for a unanimous Court.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 98.—October Term, 1970

Isiah Relford, Petitioner, v. Commandant, U. S. Disciplinary Barracks, Ft. Leavenworth, Kansas.	On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

[February 24, 1971]

Mr. Justice Blackmun delivered the opinion of the Court.

In *O'Callahan* v. *Parker*, 395 U. S. 258, decided June 2, 1969, by a five-to-three vote, the Court held that a court-martial may not try a member of our armed forces charged with attempted rape of a civilian, with housebreaking, and with assault with intent to rape, when the alleged offenses were committed off-post on American territory, when the soldier was on leave, and when the charges could have been prosecuted in a civilian court. What is necessary for a court-martial, the Court said, is the the crime be "service connected." 395 U. S., at 272.

O'Callahan's military trial, of course, was without those constitutional guarantees, including trial by jury, to which he would have been entitled had he been prosecuted in a federal civilian court in the then Territory of Hawaii where the alleged crimes were committed.

O'Callahan already has occasioned a substantial amount of scholarly comment.[1] Much of it character-

[1] Everett, O'Callahan v. Parker—Milestone or Millstone in Military Justice?, 1969 Duke L. J. 853; McCoy, Equal Justice for Servicemen: The Situation Before and Since O'Callahan v. Parker, 16 N. Y. L. Forum 1 (1970); Nelson and Westbrook, Court-Martial

izes the decision as a significant one because it is said to depart from long-established, or at least long-accepted, concepts. Some of the literature is generally approving.[2] Some of it is generally critical.[3] Some of it, as did the *O'Callahan* dissent, 395 U. S., at 284, forecasts a period of confusion for both the civil and the military courts.[4] Not surprisingly, much of the literature is concerned with the issue of *O'Callahan*'s retrospectivity. Some writers assert that the holding must be applied retroactively.[5] Others predict that it will not be so

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Jurisdiction Over Servicemen for "Civilian" Offenses: An Analysis of O'Callahan v. Parker, 54 Minn. L. Rev. 1 (1969); Wilkinson, The Narrowing Scope of Court-Martial Jurisdiction: O'Callahan v. Parker, 9 Washburn L. J. 193 (1970); Wurtzel, O'Callahan v. Parker: Where Are We Now?, 56 A. B. A. J. 686 (1970); The Supreme Court 1968 Term, 83 Harv. L. Rev. 7, 212–220 (1969); O'Callahan v. Parker, 395 U. S. 258 (1969): New Limitation on Court-Martial Jurisdiction, 61 J. Crim. L. C. & P. S. 195 (1970); Comment, 22 Baylor L. Rev. 64 (1970); Comment, 18 J. Pub. L. 471 (1969); Comment, 21 Mercer L. Rev. 311 (1969); Comment, 7 San Diego L. Rev. 55 (1970); Comment, 15 Vill. L. Rev. 712 (1970); Comment, 21 S. C. L. Rev. 781 (1969); Note, 70 Col. L. Rev. 1262 (1970); Note, 18 Kans. L. Rev. 335 (1970); Note, 3 Loyola (L. A.) L. Rev. 188 (1970); Note, 24 Miami L. Rev. 399 (1970); Note, 68 Mich. L. Rev. 1016 (1970); Note, 48 N. C. L. Rev. 380 (1970); Note, 64 Nw. U. L. Rev. 930 (1970); Note, 49 Ore. L. Rev. 237 (1970); Note, 23 Sw. L. J. 948 (1969); Note, 37 Tenn. L. Rev. 421 (1970); Note, 44 Tulane L. Rev. 417 (1970); 36 Brooklyn L. Rev. 259 (1970); 19 Buffalo L. Rev. 400 (1970); 38 Geo. Wash. L. Rev. 170 (1969); 31 Ohio St. L. J. 630 (1970); 22 Vand. L. Rev. 1377 (1969).

[2] McCoy, *supra;* 61 J. Crim. L. C. & P. S. 195; 18 Kans. L. Rev. 335; 19 Buffalo L. Rev. 400; 18 J. Pub. L. 471.

[3] Everett, *supra;* Nelson and Westbrook, *supra;* Wilkinson, *supra;* Wurtzel, *supra;* 15 Vill. L. Rev. 712; 24 Miami L. Rev. 399; 38 Geo. Wash. L. Rev. 170; 22 Vand. L. Rev. 1377.

[4] Comment, 22 Baylor L. Rev. 64; Comment, 18 Jour. Pub. L. 471; Note, 18 Kans. L. Rev. 335; Note, 23 Sw. L. J. 948; Note, 24 U. Miami L. Rev. 399; 31 Ohio St. L. J. 630.

[5] Wilkinson, *supra;* Comment, 22 Baylor L. Rev. 64; Note, 64 Nw. L. Rev. 930.

applied.[6] Naturally enough, *O'Callahan* has had its references in the federal courts of appeals[7] and in a significant number of cases in the United States Court of Military Appeals.[8]

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[6] Nelson and Westbrook, *supra;* Comment, 21 S. C. L. Rev. 781; Note, 3 Loyola (L. A.) L. Rev. 188, 198 n. 67; 44 Tulane L. Rev. 417, 424.

[7] See, for example, *Latney* v. *Ignatius,* 416 F. 2d 821 (CADC 1969); *Harris* v. *Ciccone,* 417 F. 2d 479, 488 (CA8 1969), cert. denied, 397 U. S. 1078; *Gallagher* v. *United States,* 423 F. 2d 1371 (Ct. Cl. 1970), cert. denied, 400 U. S. 849; *Silvero* v. *Chief of Naval Air Basic Training,* 428 F. 2d 1009 (CA5 1970); *King* v. *Moseley,* 430 F. 2d 732 (CA10 1970); *Zenor* v. *Vogt,* 434 F. 2d 189 (CA5 1970).

[8] *United States* v. *Borys,* 18 USCMA 547, 40 CMR 259 (1969); *United States* v. *Prather,* 18 USCMA 560, 40 CMR 272 (1969); *United States* v. *Becker,* 18 USCMA 563, 40 CMR 275 (1969); *United States* v. *DeRonde,* 18 USCMA 575, 40 CMR 287 (1969); *United States* v. *Boyd,* 18 USCMA 581, 40 CMR 293 (1969); *United States* v. *Cochran,* 18 USCMA 588, 40 CMR 300 (1969); *United States* v. *Chandler,* 18 USCMA 593, 40 CMR 305 (1969); *United States* v. *Crapo,* 18 USCMA 594, 40 CMR 306 (1969); *United States* v. *Harris,* 18 USCMA 596, 40 CMR 308 (1969); *United States* v. *Castro,* 18 USCMA 598, 40 CMR 310 (1969); *United States* v. *Henderson,* 18 USCMA 601, 40 CMR 313 (1969); *United States* v. *Riehle,* 18 USCMA 603, 40 CMR 315 (1969); *United States* v. *Williams,* 18 USCMA 605, 40 CMR 317 (1969); *United States* v. *Paxiao,* 18 USCMA 608, 40 CMR 320 (1969); *United States* v. *Smith,* 18 USCMA 609, 40 CMR 321 (1969); *United States* v. *Shockley,* 18 USCMA 610, 40 CMR 322 (1969); *United States* v. *Rose,* 19 USCMA 3, 41 CMR 3 (1969); *United States* v. *Armstrong,* 19 USCMA 5, 41 CMR 5 (1969); *United States* v. *Rego,* 19 USCMA 9, 41 CMR 9 (1969); *United States* v. *Camacho,* 19 USCMA 11, 41 CMR 11 (1969); *United States* v. *Cook,* 19 USCMA 13, 41 CMR 13 (1969); *United States* v. *Armes,* 19 USCMA 15, 41 CMR 15 (1969); *United States* v. *Morisseau,* 19 USCMA 17, 41 CMR 17 (1969); *United States* v. *Peak,* 19 USCMA 19, 41 CMR 19 (1969); *United States* v. *Plamondon,* 19 USCMA 22, 41 CMR 22 (1969); *United States* v. *Sharkey,* 19 USCMA 26, 41 CMR 26 (1969); *United States* v. *Weinstein,* 19 USCMA 29, 41 CMR 29 (1969); *United States* v. *Allen,* 19 USCMA 31, 41 CMR 31 (1969); *United States* v. *Safford,* 19

In the present federal habeas case, instituted several years after the applicant's conviction by court-martial, certiorari was granted "limited to retroactivity and scope of *O'Callahan* v. *Parker*. . . ." 397 U. S. 934 (1970). We thus do not reconsider *O'Callahan*. Our task here concerns only its application.

USCMA 33, 41 CMR 33 (1969); *United States* v. *Frazier*, 19 USCMA 40, 41 CMR 40 (1969); *United States* v. *Nichols*, 19 USCMA 43, 41 CMR 43 (1969); *United States* v. *Hallahan*, 19 USCMA 46, 41 CMR 46 (1969); *United States* v. *Huff*, 19 USCMA 56, 41 CMR 56 (1969); *United States* v. *Keaton*, 19 USCMA 64, 41 CMR 64 (1969); *United States* v. *Easter*, 19 USCMA 68, 41 CMR 68 (1969); *United States* v. *Stevenson*, 19 USCMA 69, 41 CMR 69 (1969); *United States* v. *Everson*, 19 USCMA 70, 41 CMR 70 (1969); *United States* v. *Fryman*, 19 USCMA 71, 41 CMR 71 (1969); *United States* v. *Higginbotham*, 19 USCMA 73, 41 CMR 73 (1969); *United States* v. *Adams*, 19 USCMA 75, 41 CMR 75 (1969); *United States* v. *Wysingle*, 19 USCMA 81, 41 CMR 81 (1969); *United States* v. *Gill*, 19 USCMA 93, 41 CMR 93 (1969); *United States* v. *McGonigal*, 19 USCMA 94, 41 CMR 94 (1969); *United States* v. *Fields*, 19 USCMA 119, 41 CMR 119 (1969); *United States* v. *Bryan*, 19 USCMA 184, 41 CMR 184 (1970); *United States* v. *Blackwell*, 19 USCMA 196, 41 CMR 196 (1970); *Mercer* v. *Dillon*, 19 USCMA 264, 41 CMR 264 (1970); *United States* v. *Peterson*, 19 USCMA 319, 41 CMR 319 (1970); *Gosa* v. *United States*, 19 USCMA 327, 41 CMR 327 (1970); *Wright* v. *United States*, 19 USCMA 328, 41 CMR 328 (1970); *Hooper* v. *Laird*, 19 USCMA 329, 41 CMR 329 (1970); *United States* v. *Haagenson*, 19 USCMA 332, 41 CMR 332 (1970); *In re Watson*, 19 USCMA 401, 42 CMR 3 (1970); *Brant* v. *United States*, 19 USCMA 493, 42 CMR 95 (1970); *United States* v. *Daniels*, 19 USCMA 529, 42 CMR 131 (1970); *United States* v. *Wills*, 20 USCMA 8, 42 CMR 200 (1970); *United States* v. *Lovejoy*, 20 USCMA 18, 42 CMR 210 (1970); *United States* v. *Ortiz*, 20 USCMA 21, 42 CMR 213 (1970); *United States* v. *Hargrave*, 20 USCMA 27, 42 CMR 219 (1970); *United States* v. *Davis*, 20 USCMA 27, 42 CMR 219 (1970); *United States* v. *Snyder*, 20 USCMA 102, 42 CMR 294 (1970); *United States* v. *Morley*, 20 USCMA 179, 43 CMR 19 (1970).

I

Isiah Relford, in 1961, was a corporal on active duty in the United States Army. He was stationed at Fort Dix, New Jersey.

On September 4, 1961, the visiting 14-year-old sister of another serviceman, who was on leave from his Army station at Fort Campbell, Kentucky, and who came to Fort Dix when his wife delivered a child at the base hospital, was abducted at the point of a knife from an automobile in the hospital's parking lot as she waited for her brother. The girl was raped by her abductor.

A few weeks later, on October 21, the wife of an Air Force man stationed at McGuire Air Force Base, adjacent to Fort Dix, was driving from her home on the base to the post exchange concession, also on the base, where she worked as a waitress. As the woman slowed her automobile for a stop sign, a man gained entry to the car from the passenger side and, with a knife at her throat, commanded the woman to drive on some distance to a dirt road in the fort's training area. She was raped there.

The second victim, with her assailant still in the automobile, was able to make her predicament known to military police. The assailant was apprehended and turned out to be Relford. He immediately admitted consensual intercourse with the victim. The next morning, after a brief interrogation, he confessed to kidnaping and raping both women.

At the time of each incident Relford was in civilian clothes.

It is undisputed that these events all took place on the military reservation consisting of Fort Dix and the contiguous McGuire Air Force Base.

Relford, in due course, was charged with raping and kidnaping each of the women, in violation of Articles 120 and 134, respectively, of the Uniform Code of Military Justice, 10 U. S. C. §§ 920 and 934.[9] He was tried by a general court-martial in December 1961 and was convicted on the four charges. Relford's sentence was the forfeiture of all pay and allowances, reduction to the lowest enlisted grade, and death. The customary reference to the staff judge advocate was made and the convening authority approved. U. C. M. J. Arts. 60–65, 10 U. S. C. §§ 860–865. Upon the review by the Army Board of Review,[10] required under the Code's Article 66, 10 U. S. C. § 866, the conviction was sustained; the sentence, however, was reduced to hard labor for 30 years, total forfeitures, and a dishonorable discharge. The Court of Military Appeals denied a petition for review on September 24, 1963. *United States* v. *Relford*, 14 USCMA 678.

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[9] Rape is specified in Article 120 (a):

"§ 920. Art. 120. Rape and carnal knowledge

"(a) Any person subject to this chapter who commits an act of sexual intercourse with a female not his wife, by force and without her consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct."

Kidnapping is not specifically mentioned in the Code. The charge for that offense, therefore, was laid under Article 134, the General Article:

"§ 934. Art. 134. General article

"Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary, court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court."

[10] Now the Court of Miltiary Review. Pub. L. 90–632, § 2 (27), 82 Stat. 1341 (1968).

Relford's case thus became final more than five and a half years prior to this Court's decision in *O'Callahan* v. *Parker*.

In 1967, Relford, being in custody in the United States Disciplinary Barracks at Leavenworth, Kansas, filed his application for a writ of habeas corpus with the United States District Court for the District of Kansas. He alleged inadequate representation by counsel in the military proceeding. Chief Judge Stanley found no merit in the claim and denied the application. On appeal, Relford repeated the inadequate representation claim and, for the first time, raised questions as to the admissibility of his confession, as to a lineup procedure, and as to the fairness of his military trial. The Tenth Circuit reviewed all these claims on the merits, but affirmed the District Court's denial of relief. *Relford* v. *Commandant*, 409 F. 2d 824 (CA10 1969).[11]

The Tenth Circuit's opinion was filed on April 23, 1969, several weeks prior to this Court's decision in *O'Callahan* v. *Parker*. The issue as to the propriety of trial by court-martial, perhaps understandably, was not raised before Judge Stanley or on the appeal to the Tenth Circuit; the issue, however, had been presented in O'Callahan's chronologically earlier appeal in his habeas proceeding. See *United States ex rel. O'Callahan* v. *Parker*, 390 F. 2d 360, 363–364 (CA3 1968).

II

This case, as did *O'Callahan*, obviously falls within the area of stress between the constitutional guarantees contained in the Constitution's Article III, § 2, Clause 3, in the Sixth Amendment, and possibly in the Fifth Amendment, on the one hand, and, on the other, the

[11] We are advised by the parties that Relford was released on parole on May 20, 1970.

power vested in the Congress, by the Constitution's Article I, § 8, Clause 14, "to make Rules for the Government and Regulation of the land and naval Forces," with its supportive Necessary and Proper provision in Clause 18, and the Fifth Amendment's correlative exception for "cases arising in the land or naval forces."

Relford argues that *O'Callahan*'s requirement that the crime be "service connected" before a court-martial may sit demands that the crime itself be military in nature, that is, one involving a level of conduct required only of servicemen and, because of the special needs of the military, one demanding military disciplinary action. He further states that the charges against him—like those against O'Callahan—do not involve a level of conduct required only of servicemen. He maintains that occurrence of the crimes on a military reservation and the military-dependent identity of one of his victims do not substantially support the military's claim of a special need to try him.

In further detail, it is stated that the Court in *O'Callahan* recognized that a court-martial "remains to a significant degree a specialized part of the overall mechanism by which military discipline is preserved," 395 U. S., at 265; that military courts, of necessity, are not impartial weighers of justice, but have as their primary consideration the enforcement of the unique discipline required of a fighting force; and that, as a consequence, the court-martial must be limited to the "least possible power adequate to the end proposed." *United States ex rel. Toth* v. *Quarles*, 350 U. S. 11, 22–23 (1955), citing *Anderson* v. *Dunn*, 19 U. S. (6 Wheat.) 204, 230–231 (1821).

It is then said that the level of conduct Relford is alleged to have violated, that is, intercourse only with consent, is the very same level required in the civilian

community and is not altered by considerations of military dependency; that his alleged crimes are no more military than were O'Callahan's; that the ability of the military to perform its mission remains the same whether the crimes with which he was charged were committed on base or off base; that any interest in the maintenance of order on the base is adequately served by apprehension of the offender and trial in a civilian court; that the on-post/off-post distinction has little meaning; that it is the nature of the crime that is important; that the crimes charged to Relford stand in contrast to purely military crimes such as desertion, absence without leave, missing movement, assaulting a superior commissioned officer, and being drunk on duty, Arts. 85, 86, 87, 90, and 112, 10 U. S. C. §§ 885, 886, 887, 890, and 912; and that only crimes of the latter type have "an immediate adverse impact upon the ability of the military to perform its mission," and are "proper subjects for the exercise of military jurisdiction."

III

In evaluating the force of this argument, the facts of *O'Callahan* and the precise holding in that case possess particular significance. We repeat: O'Callahan was in military service at the time and was stationed at a base in American territory. His offenses, however, took place off base in a civilian hotel while he was on leave and not in uniform.

MR. JUSTICE DOUGLAS, in speaking for the Court, said:

> "In the present case petitioner was properly absent from his military base when he committed the crimes with which he is charged. There was no connection—not even the remotest one—between his military duties and the crimes in question. The crimes were not committed on a military post or

> enclave; nor was the person whom he attacked performing any duties relating to the military. Moreover, Hawaii, the situs of the crime, is not an armed camp under military control, as are some of our far-flung outposts.
>
> "Finally, we deal with peacetime offenses, not with authority stemming from the war power. Civil courts were open. The offenses were committed within our territorial limits, not in the occupied zone of a foreign country. The offenses did not involve any question of the flouting of military authority, the security of a military post, or the integrity of military property." 395 U. S., at 273–274.

We stress seriatim what is thus emphasized in the holding:

1. The serviceman's proper absence from the base.
2. The crime's commission away from the base.
3. Its commission at a place not under military control.
4. Its commission within our territorial limits and not in an occupied zone of a foreign country.
5. Its commission in peacetime and its being unrelated to authority stemming from the war power.
6. The absence of any connection between the defendant's military duties and the crime.
7. The victim's not being engaged in the performance of any duty relating to the military.
8. The presence and availability of a civilian court in which the case can be prosecuted.
9. The absence of any flouting of military authority.
10. The absence of any threat to a military post.
11. The absence of any violation of military property.

One might add still another factor implicit in the others:

12. The offense's being among those traditionally prosecuted in civilian courts.

IV

This listing of factors upon which the Court relied for its result in *O'Callahan* reveals, of course, that it chose to take an *ad hoc* approach to cases where trial by court-martial is challenged. We therefore turn to those factors in Relford's case that, as spelled out in O'Callahan's, bear upon the court-martial issue.

It is at once apparent that elements 4, 6, 8, 11, and 12, and perhaps 5 and 9, operate in Relford's favor as they did in O'Callahan's: The offenses were committed within the territorial limits of the United States; there was no connection between Relford's military duties and the crimes with which he was charged; courts in New Jersey were open and available for the prosecution of Relford; despite the Vietnam conflict we may assume for present purposes that the offenses were committed in peacetime and that they were unrelated to any problem of authority stemming from the war power; military authority, directly at least, was not flouted; the integrity of military property was not violated; and the crimes of rape and kidnaping are traditionally cognizable in the civilian courts.

Just as clearly, however, the other elements, present and relied upon in O'Callahan's case, are not at hand in Relford's case. These are elements 1, 2, 3, 7, and 10: Relford was not absent from the base; the crimes were committed on the military enclave; the second victim, because of her duties at the post exchange and because of the fact that her abduction and the attack upon her took place as she was returning to the PX at the end of a short and approved break in her work, was engaged in the performance of a duty relating to the military; and the security of two women properly on the post was threatened and, indeed, their persons were violated.

There are still other significant aspects of the Relford offenses: The first victim was the sister of a serviceman who was then properly at the base. The second victim was the wife of a serviceman stationed at the base; she and her husband had quarters on the base and were living there. Tangible property properly on the base, that is, two automobiles, were forcefully and unlawfully entered.

V

With the foregoing contrasting comparison of the pertinent factual elements of *O'Callahan* with those of Relford's case, we readily conclude that the crimes with which Relford was charged were triable by a military court. We do not agree with petitioner when he claims that the "apparent distinctions" between this case and *O'Callahan* "evaporate when viewed within the context of the 'service-connected' test." [12] We stress: (a) The essential and obvious interest of the military in the security of persons and of property on the military enclave. Relford concedes the existence of this vital interest.[13] (b) The responsibility of the military commander for maintenance of order in his command and his authority to maintain that order. See *Cafeteria & Restaurant Workers Union, Local 473, AFL–CIO* v. *McElroy*, 367 U. S. 886 (1961). Relford also concedes this. (c) The impact and adverse effect that a crime committed against a person or property on a military base, thus violating the base's very security, has upon morale, discipline, reputation and integrity of the base itself, upon its personnel and upon the military operation and the military mission. (d) The conviction that Article I, § 8, Clause 14, vesting in the Congress the power "To make Rules for the Government and Regulation

[12] Brief, p. 9.

[13] Reply brief, p. 2.

of the land and naval Forces," means, in appropriate areas beyond the purely military offense, more than the mere power to arrest a serviceman-offender and turn him over to the civil authorities. The term "Regulation" itself implies, for those appropriate cases, the power to try and to punish. (e) The distinct possibility that civil courts, particularly nonfederal courts, will have less than complete interest, concern, and capacity for all the cases that vindicate the military's disciplinary problems within its own community. See W. Winthrop, Military Law and Precedents, 725 (2d ed. 1896, 1920 Reprint); Wilkinson, 9 Washburn Law J. 193, 208 (1970). (f) The very positive implication in *O'Callahan* itself, arising from its emphasis on the absence of service-connected elements there, that the presence of factors such as geographical and military relationships have important contrary significance. (g) The recognition in *O'Callahan* that, historically, a crime against the person of one associated with the post was subject even to the General Article. The comment from Winthrop, 723–724:

> "Thus such crimes as theft from or robbery of an officer, soldier, post trader, or camp-follower . . . inasmuch as they directly affect military relations and prejudice military discipline, may properly be—as they frequently have been—the subject of charges under the present Article. On the other hand, where such crimes are committed upon or against *civilians*, and not at or near a military camp or post, or in breach or violation of a military duty or order, they are not in general to be regarded as within the description of the Article, but are to be treated as civil rather than military offenses." (Footnotes omitted.)

cited both by the Court in *O'Callahan*, 395 U. S., at 274, n. 19, and by the dissent at 278–279, certainly so indi-

cates and even goes so far as to include an offense against a civilian committed "near" a military post. (h) The mis-reading and undue restriction of O'Callahan if it were interpreted as confining the court-martial to the purely military offenses that have no counterpart in nonmilitary criminal law. (i) Our inability appropriately and meaningfully to draw any line between a post's strictly military areas and its nonmilitary areas, or between a serviceman-defendant's on-duty and off-duty activities and hours on the post.

This leads us to hold, and we do so hold, that when a serviceman is charged with an offense committed within or at the geographical boundary of a military post and violative of the security of a person or of property there, that offense may be tried by a court-martial. Expressing it another way: a serviceman's crime against the person of an individual upon the base or against property on the base is "service connected," within the meaning of that requirement as specified in *O'Callahan,* 395 U. S., at 272. This delineation, we feel, fully comports with the standard of "the least possible power adequate to the end proposed" referred to in *O'Callahan,* 395 U. S., at 265.

By this measure, Relford's alleged offenses were obviously service-connected. There is, therefore, no constitutional or statutory barrier and Relford was properly tried by a court-martial.

VI

We recognize that any *ad hoc* approach leaves outer boundaries undetermined. *O'Callahan* marks an area, perhaps not the limit, for the concern of the civil courts and where the military may not enter. The case today marks an area, perhaps not the limit, where the court-martial is appropriate and permissible. What lies between is for decision at another time.

VII

Having reached this result on the court-martial issue, the additional issue, that the parties have argued, of *O'Callahan*'s retrospectivity, need not be decided. See *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 461 (1945). We recognize that the retroactivity question has important dimensions, both direct and collateral, and that the Government strongly urges that the question be decided here and now. We have concluded, however, that the issue is better resolved in other litigation where, perhaps, it would be solely dispositive of the case. We take some comfort in the hope that the present decision should eliminate at least some of the confusion that the parties and commentators say has emerged from *O'Callahan*.[14]

Affirmed.

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[14] The Solicitor General supplied the following data relative to selected types of offenses over which the Army assumed jurisdiction in 1967:

Offense	*Number Occurring on Military Reservations*	*Number Occurring off Military Reservations*
1. Homicides	30	24
2. Sexual crimes (Rape, indecent assaults, etc.)	214	105
3. Robbery	112	44
4. Assaults	451	160
5. Burglary and Housebreaking	165	28
6. Arson	24	3
7. Larceny	1029	74
8. Larceny of motor vehicle	221	56
9. Narcotics offenses (including marihuana and dangerous drugs)	833	106
10. Disorderly conduct	59	22